

one of jurisdiction, the High Court was, in our view, competent to exercise the powers vested in it by Art. 227.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

1962

Dahya Lal

v.

*Rasul Mohammed
Abdul Rahim*

Shah J.

RAM AUTAR

v.

STATE OF U. P.

(J. L. KAPUR, K. C. DAS GUPTA and
RAGHUBAR DAYAL, JJ.)

1962

May 3.

Public Nuisance—Auctioning vegetables in private house—Carts of seilers kept on public road—Unlawful obstruction, if auctioneers responsible—Noise caused in auctioning—Whether trade injurious to public health and comfort—Code of Criminal Procedure, 1898 (Act V of 1898), s. 133.

The appellants carried on the trade of auctioning vegetables in a private house in the Subzimandi quarter. The persons who brought vegetables for sale kept their carts on the public road where they caused obstruction to traffic. The noise caused by the auctioning caused discomfort to persons living in the locality. An order was passed under s. 133 of the Code of Criminal Procedure restraining auctioning vegetables in their house.

Held, that the order was not justified under s. 133 of the Code. Merely because the appellants carried on auctioning in connection with which the carts were brought, they could not be considered to have caused the obstruction. In a trade like auctioning which has to be carried on as necessary for the well being of the community some amount of noise has to be borne by the public. Section 133 was not intended to stop such trades merely because of the discomfort caused by the noise.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 79 of 1960.

Appeal by special leave from the judgment and order dated August 18, 1959, of the Allahabad High Court in Criminal Revision No. 947 of 1959.

1962

Ram Autar
v.
State of U. P.

C.L. Prem, for the appellants.

G.C. Mathur and *C. P. Lal*, for the respondent.

1962. May 3. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA, J. - This appeal by special leave is against the order of the High Court at Allahabad dismissing the application for revision of an order under s. 133 of the Code of Criminal Procedure.

The three appellants carry on the trade of auctioning vegetables. These vegetables, it appears, are brought in carts which are parked on the public road outside the building where the auctioning takes place. There was some dispute between these appellants and the Municipal Board which it is suggested by the appellants was really behind the move to get this order under s. 133 passed against them. It is unnecessary, however, for us to consider that matter. What appears to be clear is that the trade is carried on in a private house in the subzimandi quarter and it dose happen that some amount of inconvienience is caused to people who pass by the public road because of the carts which necessarily come near this house. The real question is, whether because this trade of auctioning vegetables which the appellants carry on in their private house produce the consequence that people passing by the road are put to inconvenience, action can be taken under s. 133 of the Code of Criminal Procedure. The High Court seems to be of the opinion:—

“when it is clear that the business of auctioning vegetables cannot be carried on without causing obstruction to the passers by, the conduct of the business can be prohibited, even though it is carried on in a private place.”

It seems to us that this proposition has been put too widely. Section 133 of the Code of Criminal Procedure empowers action by the District Magistrate, Sub-Divisional Magistrate or Magistrate 1st class to remove public nuisances in certain circumstances. Two out of the several cls. of s. 133(1) in which these circumstances are set out, with which we are concerned, are the first and second clauses. The first clause provides for action by Magistrate where he considers, on receiving a police-report or other information and on taking such evidence as he thinks fit, that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public or from any public place. The second clause deals with the position where the conduct of any trade or occupation or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated.

It is difficult to see how the first clause can have any application. Unlawful obstruction, if any, is certainly not caused by the people who carry on the trade of auctioning. If the obstruction caused by keeping the carts on the road can be considered to be unlawful obstruction within the meaning of this clause—about which we express no opinion action can be taken against the persons causing such obstruction. The obvious difficulty in the way of that might be that the persons who bring the carts are not the same from day to day. But whether or not any action is possible under s. 133 against the persons bringing the carts, we are unable to agree that merely because the appellants carry on auctioning in connection with which the carts are brought, they can be considered to have caused the

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obstruction. In our opinion, the appellants cannot be considered to be the persons causing obstruction.

Turning now to the next clause, the question arises how the conduct of this auctioning trade is injurious to the health or physical comfort of the community. Undoubtedly, some amount of noise and perhaps a great deal of noise is caused when the auction is going on. That however is a necessary concomitant of buying and selling large quantities and it will be unreasonable to think that merely because some amount of noise is caused which people preferring perfect peace may not like, this is injurious to the physical comfort, or health of the "community". It appears to us that the conduct of trades of this nature and indeed of other trades in localities of a city where such trades are usually carried on, is bound to produce some discomfort, though at the same time resulting perhaps in the good of the community in other respects. If a trade like auctioning which has to be carried on as necessary for the well being of the community, some amount of noise has to be borne in at least that part of the town where such trade is ordinarily carried on. In making the provisions of s. 133 of the Code of Criminal Procedure, the legislature cannot have intended the stoppage of such trades in such part of the town, merely because of the "discomfort" caused by the noise in carrying on the trade. In our opinion therefore, the slight discomfort that may be caused to some people passing by the road or living in the neighbourhood cannot ordinarily be considered to be such as to justify action under s. 133 of the Code of Criminal Procedure. We do not think that the orders are justified under s. 133. Accordingly, we allow the appeal and set aside the order made by the Magistrate.

Appeal allowed.